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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THOMAS WEISEL PARTNERS LLC, a Delaware limited liability company, and THOMAS WEISEL INTERNATIONAL PRIVATE LIMITED, an Indian company,

Plaintiffs,

v.

BNP PARIBAS, a French corporation, BNP PARIBAS SECURITIES (ASIA) LIMITED, a Hong Kong company, and PRAVEEN CHAKRAVARTY, an individual.

Defendants.

No. C-07-6198 MHP

Action Filed: December 6, 2007

PLAINTIFFS' CONSOLIDATED
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT

Date: August 18, 2008
Time: 2:00 p.m.
Place: Courtroom 15
Judge: Hon. Marilyn Hall Patel

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OPP. TO DEF.'S MOT. TO DISMISS FIRST AM. COMPL. C-07-6198 MHP

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1 **INTRODUCTION**2 **A. The Illegal Raid.**

3 Plaintiff Thomas Weisel Partners LLC ("TWP LLC") is an investment bank and
 4 broker-dealer headquartered in California. Until the events described below, it provided
 5 securities research on thinly-covered U.S. stocks through its Mumbai-based subsidiary,
 6 Thomas Weisel International Private Limited ("TWIPL"). This product was called
 7 Discovery Research.

8 In late October and early November 2007, Defendants BNP Paribas and BNP Paribas
 9 Securities (Asia) Limited ("BNPP Asia"; collectively the "BNP Paribas Defendants") raided
 10 TWP LLC's Mumbai office. The raid was swift and effective. The BNP Paribas
 11 Defendants lured away ten of Discovery Research's fourteen NASD- (now FINRA-¹)
 12 licensed professionals and at least seven support staff, representing nearly a third of
 13 Discovery Research's personnel.

14 The swiftness and effectiveness of the raid was only possible because the BNP Paribas
 15 Defendants conspired with a TWP LLC employee and fiduciary—Defendant Praveen
 16 Chakravarty. Chakravarty, who was the Director of Discovery Research, arranged for
 17 TWIPL's employees to meet secretly with the BNP Paribas Defendants' senior executives;
 18 provided BNP Paribas executives with highly confidential information about the employees'
 19 salaries and bonuses; and encouraged the targeted employees to leave en masse.

20 A BNPP Asia executive, Jonathan Harris, outlined the scheme in an October 14, 2007
 21 email to Chakravarty:

22 Pierre [Rousseau]² and I enjoyed meeting with you and your team on our recent
 23 trip. Of course we missed our flight by 10 minutes after leaving you at the
 Oberoi, but made it back to Hong Kong eventually.

24 Pierre and I both came away feeling we had some good discussions and that there

25 ¹The result of the merger of the self-regulatory divisions of the National Association of
 26 Securities Dealers and the New York Stock Exchange, FINRA is now the chief self-
 regulatory agency in the United States for broker-dealers and investment banks.

27 ²Pierre Rousseau is the Chief Executive Officer of BNPP Asia *and* the Global Head of
 28 Equity Brokerage for BNP Paribas.

1 is a lot of complementary interest. As we discussed, the way we'd like to take
 2 this forward is to first identify the core group of your team. I think you said
 3 about 20-25 individuals. We'd like to then work on preparing employment
 4 documents for all of them. *Once you have them and all is satisfactory, we'd
 look to you to resign from Thomas Weisel enmass. If their reaction is that
 they'd move to shut down the remainder of the office, we can step in and offer
 to take over the remainder as a gesture to save them the office shutdown costs.*

5 First step would be to get from you a list of all employees, their current comp and
 6 job descriptions. Next I'd like you to highlight the 20 or 25 key individuals, and
 7 a bit more info on their job descriptions and background. For this group, please
 8 include an indication of what comp levels you would think about for their move
 9 to BNP Paribas. Once I get this from you, you and I can arrange for a call to talk
 through the info. (Declaration Of Karanveer Dhillon In Support Of Plaintiffs'
 Consolidated Opposition To Defendants' Motions To Dismiss The First
 Amended Complaint ("Dhillon Decl.") ¶17 & Ex. E (emphasis added))

10 Chakravarty soon provided the confidential compensation and skills information that
 11 the BNP Paribas Defendants needed. Within just three weeks of the secret meeting,
 12 seventeen core members of the Discovery Research team resigned.

13 Crippled by the raid, Discovery Research shut down a month later. Almost
 14 simultaneously, the BNP Paribas Defendants launched their own research business in
 15 Mumbai. *Every single member of the research staff of BNP Paribas's Mumbai research
 16 venture is a former member of Plaintiffs' Discovery Research team.*

17 B. Summary Of Argument.

18 The BNP Paribas Defendants and Chakravarty have brought nearly identical motions
 19 to dismiss, arguing that this Court (1) lacks personal jurisdiction over BNPP Asia and
 20 Chakravarty and (2) is an inconvenient forum in which to litigate Plaintiffs' claims.
 21 Chakravarty also argues that TWP LLC lacks standing. Both motions should be denied.

22 *Jurisdiction.* This Court may exercise specific jurisdiction over BNPP Asia and
 23 Chakravarty because they intentionally disrupted the Discovery Research business and knew
 24 that TWP LLC, a California company, would bear the brunt of that disruption. *See Sections*
 25 *I(A)(2) & I(C), infra.* Such "express aiming" constitutes the "purposeful availment"
 26 required for specific jurisdiction. *See Sections I(A) & I(C), infra.*

27 The Court also may exercise general jurisdiction over BNPP Asia, which does
 28 substantial business with California investors—business solicited for it by at least one other

1 BNP Paribas affiliate acting as BNPP Asia's general agent. *See* Section I(B), *infra*.
 2 Defendants also have failed to demonstrate "compellingly" that the exercise of personal
 3 jurisdiction—specific or general—would be unreasonable. *See* Section I(D), *infra*.
 4 Chakravarty's "standing" argument misses the mark as well: TWP LLC has standing to
 5 pursue its claims because it was directly injured by the destruction of Discovery Research.
 6 *See* Section I(E), *infra*.

7 *Forum Non Conveniens.* Defendants' *forum non conveniens* arguments are equally
 8 flawed. The Bombay High Court, where this case would be tried if litigated in India, is so
 9 understaffed and plagued by delays that it does not constitute an adequate alternative forum.
 10 *See* Section II(E), *infra*. Nor have Defendants carried their heavy burden of showing that the
 11 balance of private and public convenience factors so favors dismissal as to outweigh
 12 Plaintiffs' traditional right to choose the forum in which to litigate. *See* Section II(C), *infra*.

13 For all these reasons, Defendants must answer in this Court for their brazen theft of
 14 Plaintiffs' trade secrets, and their destruction of the innovative research business it took
 15 Plaintiffs several years and millions of dollars to build.

16 STATEMENT OF FACTS

17 A. TWP LLC Is A Multinational Investment Bank Headquartered In 18 California.

19 Plaintiff TWP LLC is an investment bank and broker-dealer organized under the laws
 20 of Delaware and headquartered in San Francisco, California. Dhillon Decl. ¶2; *see also*
 21 Declaration of Michael L. Gallo In Support Of Plaintiffs' Consolidated Opposition To
 22 Defendants' Motions To Dismiss The First Amended Complaint ("Gallo Decl.") Ex. A.
 23 TWP LLC is a wholly-owned subsidiary of Thomas Weisel Partners Group, Inc. ("TWP
 24 Group"), a publicly-traded investment bank holding company also organized under the laws
 25 of Delaware and headquartered in San Francisco. Dhillon Decl. ¶2; Gallo Decl. Ex. A at F-
 26 7. TWP LLC is the largest of several TWP Group subsidiaries, and is TWP Group's main
 27 broker-dealer. Dhillon Decl. ¶2. TWP LLC provides strategic advisory and corporate
 28 finance services to U.S. and international emerging growth companies, and equity research,

1 trade execution and asset management services to wealthy individuals and institutional
 2 investors. *Id.* TWP LLC has offices in many cities around the globe, including the branch
 3 office in Mumbai, India that was devastated by Defendants' tortious conduct. *Id.*

4 **B. TWIPL Is An Indian Subsidiary And Branch Office Of TWP LLC Created
 5 To Facilitate TWP Group's India Initiatives, Including Discovery Research.**

6 Plaintiff TWIPL, incorporated under the laws of India in August 2005, is wholly
 7 owned by TWP LLC, either directly or indirectly through a Mauritius holding company.
 8 Dhillon Decl. ¶¶3, 4 & Ex. A; *see also* Gallo Decl. Ex. A. TWIPL provided services to
 9 TWP LLC pursuant to an Intercompany Services Agreement ("ISA") Dhillon Decl. ¶6 &
 10 Ex. C.³

11 TWIPL leased office space in Mumbai, India, and employed Indian nationals who
 12 worked on several different initiatives, one of which (Discovery Research) produced
 13 research reports on under-covered companies whose stocks traded on U.S. exchanges. *Id.*
 14 ¶5. In October 2005, the New York Stock Exchange ("NYSE") approved TWIPL's Mumbai
 15 office as a branch of TWP LLC. *Id.* ¶5 & Ex. B; *see also* Gallo Decl. Ex. A at F-7. Until
 16 Defendants' tortious acts forced TWP Group to close it, Discovery Research was by far the
 17 largest component of TWIPL, employing more than 50 people, including 14 U.S.-licensed
 18 analysts who published research on approximately 150 different companies.⁴ Dhillon Decl.
 19 ¶5 & Ex. B.

20 **C. Discovery Research Was Part Of TWP LLC's Integrated Research Business
 21 Operated Out Of San Francisco, California.**

22 The purpose of the Discovery Research business was to allow TWP LLC to distribute

24 ³The ISA provided that

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26 ⁴Discovery Research was shut down in December 2007 in response to Defendants'
 27 raid. In May 2008, a second TWIPL initiative was closed down, but TWIPL continues to
 28 operate on a limited basis. Dhillon Decl. ¶¶20-21.

1 research reports on a broader range of United States companies than TWP LLC previously
 2 had been able to provide. *Id.* ¶7. By using Discovery Research analysts based in India to
 3 analyze the companies and write research reports, TWP LLC extended coverage to smaller
 4 companies that were not cost-effective for U.S.-based analysts to cover. *Id.*

5 Discovery Research operated for the benefit of TWP LLC. Pursuant to the ISA,
 6 TWIPL was paid its operating costs for Discovery Research, plus 12 percent. *Id.* ¶9. TWP
 7 LLC earned revenues by selling subscriptions to Discovery Research reports. *Id.* TWP LLC
 8 also benefited from Discovery Research's ability to broaden TWP LLC's coverage universe
 9 in other ways. *Id.* TWP LLC made a market in the stocks of many of the companies
 10 covered by Discovery Research, and derived revenue when its customers traded in those
 11 stocks. *Id.*

12 Defendant Praveen Chakravarty, a Director of TWIPL and the head of Discovery
 13 Research's Mumbai operation, was employed by TWP LLC and registered with U.S.
 14 regulatory authorities (FINRA, the New York Stock Exchange and the State of California,
 15 for example) as an associated person of TWP LLC. Declaration of Lisa Sorani In Support
 16 Of Plaintiffs' Consolidated Opposition To Defendants' Motions To Dismiss The First
 17 Amended Complaint ("Sorani Decl.") ¶5 & Ex. D; Declaration of Karen Santos In Support
 18 Of Plaintiffs' Consolidated Opposition To Defendants' Motions To Dismiss The First
 19 Amended Complaint ("Santos Decl.") ¶2 & Ex. A.

20 The Discovery Research analysts—who researched and authored the research reports
 21 that were Discovery Research's principal product—worked in Mumbai, but were
 22 functionally integrated into TWP LLC's larger research operations and subject to the same
 23 regulation and oversight as San Francisco-based TWP LLC research analysts. Dhillon Decl.
 24 ¶8; Sorani Decl. ¶7 & Exs. F, G. The Discovery Research analysts were, like Chakravarty,
 25 registered with U.S. regulatory authorities as associated persons of TWP LLC. Dhillon
 26 Decl. ¶5; *see also* Santos Decl. ¶3 & Ex. B.

27 TWP LLC's compliance department, headquartered in San Francisco, oversaw
 28 Discovery Research employees' compliance with applicable regulations and TWP LLC

1 policies. Dhillon Decl. ¶10. San Francisco-based TWP LLC employees monitored and
 2 archived Discovery Research employees' emails, conducted compliance training for
 3 Discovery Research employees (via video conference or periodic visits to India), and
 4 periodically inspected TWIPL's Mumbai office. *Id.* TWP LLC personnel based in San
 5 Francisco also monitored Discovery Research employees' trades to ensure they complied
 6 with TWP LLC policies and regulatory rules. *Id.* One London-based TWP LLC compliance
 7 officer, whose work was overseen by management in San Francisco, assisted with some of
 8 these tasks. *Id.*

9 TWP LLC was closely involved in Discovery Research coverage and ratings decisions,
 10 as well as in producing the research reports themselves. *Id.* ¶11. TWP LLC research
 11 managers based in San Francisco oversaw the strategic positioning of Discovery Research's
 12 product within the larger scheme of TWP LLC's research business. *Id.* Decisions about
 13 coverage by Discovery Research analysts, as well as ratings or price target changes, were
 14 made by a seven-person Research Review and Oversight Committee ("RROC") chaired by
 15 Keith Gay, the San Francisco-based Head of Research for TWP LLC. *Id.* Except for the
 16 membership of the committee, the RROC followed the exact same procedures as TWP
 17 LLC's research review and oversight committee for U.S.-based analysts. *Id.* The majority
 18 of the RROC were U.S.-based TWP LLC employees, three of whom were based in San
 19 Francisco. *Id.* Before publication of Discovery Research reports, the reports had to be
 20 approved by a Supervisory Analyst employed by TWP LLC in San Francisco to ensure
 21 compliance with regulatory requirements. *Id.* ¶12. Additional support was provided by
 22 Supervisory Analysts located in Baltimore and London. *Id.* All formal research reports
 23 written by Discovery Research analysts were edited, first in Mumbai and then by TWP LLC
 24 personnel in San Francisco or London, to ensure that the content and format met TWP LLC
 25 standards. *Id.*

26 The Discovery Research analysts' reports show that Discovery Research was an arm of
 27 TWP LLC's research operation. The research reports were copyrighted by TWP LLC, used
 28 a TWP LLC stock rating system and, in many cases, stated that TWP LLC made a market in

1 the subject security. *See, e.g.*, Dhillon Decl. ¶13 & Ex. D. Each Discovery Research report
 2 listed its author's name and contact information, including a phone number in the San
 3 Francisco area code and an @tweisel.com email address. *Id.*

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6 TWP LLC sold and distributed the research reports authored by Discovery Research
 7 analysts. Declaration of Michi Sethavarangura In Support Of Plaintiffs' Consolidated
 8 Opposition To Defendants' Motions To Dismiss The First Amended Complaint
 9 ("Sethavarangura Decl.") ¶2. TWP LLC's Institutional Sales department—based in San
 10 Francisco—sold access to Discovery Research reports on a subscription basis to institutional
 11 investors located solely in the United States. *Id.* The subscription contracts were between
 12 TWP LLC and its customers; TWIPL did not sell any Discovery Research research and was
 13 not a party to any subscription agreements. *Id.* & Ex. A. TWP LLC distributed the
 14 Discovery Research reports through a secure website that resided on servers in San
 15 Francisco and could only be accessed by subscribers. *Id.* ¶3. TWP LLC's Marketing
 16 department in San Francisco oversaw the website's design and processed all proposed
 17 changes. *Id.*

18 Discovery Research's operations were intertwined with, and overlapped, those of TWP
 19 LLC in numerous other ways. TWP LLC's legal department, based in San Francisco and
 20 New York, handled TWIPL's legal affairs, including those related to Discovery research.
 21 Dhillon Decl. ¶14. TWP LLC personnel in San Francisco also handled some or all of
 22 TWIPL's human resources, accounting, and facilities management functions. *Id.*

23 Substantial overlap likewise exists between TWP LLC and TWIPL's IT systems.
 24 TWIPL has no separate IT department; TWIPL's one resident IT person in Mumbai reports
 25 to TWP LLC personnel in San Francisco. Declaration Of Dheeraj Soni In Support Of
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1 Plaintiffs' Consolidated Opposition To Defendants' Motions To Dismiss The First Amended
 2 Complaint ("Soni Decl.") ¶2. The Discovery Research website was maintained and hosted
 3 by TWP LLC in San Francisco. *Id.* Although a significant portion of information pertaining
 4 to Discovery Research resided in the first instance on laptops and a server in Mumbai—
 5 which TWP LLC purchased for TWIPL's use—that information, and additional information,
 6 was also kept in San Francisco. *Id.* The Mumbai server was networked into the TWP LLC
 7 system and was backed up daily to TWP LLC servers in San Francisco and/or New York.
 8 *Id.* Emails and internet messages generated by Discovery Research personnel in Mumbai
 9 were captured and archived by TWP LLC compliance software in San Francisco. *Id.*
 10 Discovery Research employees also had access through the TWP LLC network to a drive on
 11 TWP LLC's San Francisco server with confidential information about both TWIPL and
 12 Discovery Research. *Id.*

13 **D. Defendant Chakravarty Was At All Times A TWP LLC Employee And The
 14 Director Of Discovery Research.**

15 On August 7, 2003, TWP LLC offered Defendant Praveen Chakravarty a position as an
 16 Equity Research Associate in its San Francisco office. Sorani Decl. ¶2 & Ex. A.
 17 Chakravarty accepted that offer. *Id.* Chakravarty is an Indian citizen and was employed in
 18 San Francisco until early October 2005. *Id.* ¶3. As a condition of his employment,
 19 Chakravarty agreed to protect TWP LLC's confidential information, to not solicit its
 20 employees, and to not use his position or TWP LLC's confidential information for his
 21 personal gain or to compete with TWP LLC. *Id.* ¶4 & Exs. B, C.

22 In October 2005, TWP LLC assigned Chakravarty to TWIPL in Mumbai to take the
 23 lead management role in building up and running the research side of Discovery Research.
 24 Dhillon Decl. ¶15; Sorani Decl. ¶5 & Ex. D. Until his termination on November 7, 2007,
 25 Chakravarty remained an employee of TWP LLC, whose employment terms he and TWP
 26 LLC agreed would be governed by "the laws of the US and [TWP LLC rules and
 27 regulations]." *Id.* In Mumbai, Chakravarty reported to Karanveer ("KV") Dhillon, the
 28 Managing Director of TWIPL (but not a TWIPL employee). *Id.* ¶5. As part of his

1 international assignment, Chakravarty was named “Director of Discovery Research” and
 2 received a raise and significant benefits, including a guaranteed bonus, an equity award and
 3 a substantial housing allowance. Sorani Decl. ¶5 & Ex. D.

4 As Director of Discovery Research, Chakravarty had access to most if not all
 5 confidential information about Discovery Research. Dhillon Decl. ¶16. Using the shared
 6 TWP LLC/TWIPL computer system, Chakravarty received and/or reviewed documents
 7 showing employee compensation levels, current and projected profit and loss statements,
 8 and other financial planning documents. *Id.* Chakravarty also was involved intimately with
 9 the research at the core of the Discovery Research business and, as a result, had access to
 10 research reports, information about coverage decisions, contact information for the
 11 companies the Discovery Research team covered, training materials, and knowledge about
 12 the research analysts and associates themselves. *Id.* Chakravarty also had access to
 13 confidential customer information about Discovery Research subscribers. *Id.*

14 **E. Defendant BNPP Asia Is Part Of The BNP Paribas Global Banking And
 15 Securities Trading Network And, As Such, Does Substantial Business With
 California Investors.**

16 **1. BNP Paribas’s Global Network Of Companies Operates As A Seamless
 17 Integrated System.**

18 BNPP Asia is part of the BNP Paribas Group, a network of interrelated companies
 19 centered on BNP Paribas, parent of BNPP Asia and a codefendant in this lawsuit. BNP
 20 Paribas is an international retail and investment bank headquartered in France with a
 21 presence in more than 85 countries and close to 140,000 employees worldwide. Gallo Decl.
 22 Ex. B at 2. BNP Paribas has substantial operations in the United States, including a regional
 23 office in San Francisco, and has a designated officer for service of process in California. *Id.*,
 24 Ex. C.

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26 BNP Paribas does not dispute that it is subject to jurisdiction in the
 27 Northern District of California.

28 BNP Paribas markets itself as an “international banking network,” with regional

subsidiaries and affiliates in 85 countries that can offer customers investment opportunities around the globe. *Id.*, Ex. E. This network is promoted as an integrated system, providing customers a seamless international banking experience.

For clients who need international securities services, BNP Paribas's website touts its ability to provide "global execution services" to investors and describes global execution as "the answer" for financial institutions easily to carry out complicated international securities transactions:

We provide clients with a fully-integrated solution covering both the execution of a trade order and the associated clearing, settlement and custody-related tasks. Our market coverage includes easy access to dozens of exchanges worldwide, so clients just send us their initial trade instructions—and we handle the rest. (*Id.*, Ex. F)

Acting through its network of regional offices and subsidiaries, BNP Paribas thus offers customers direct access to securities markets—including the ability to order trades of equities and structured derivatives—on more than 50 exchanges around the world. *Id.*

BNP Paribas also uses its network of regional offices and subsidiaries to conduct research into securities traded on exchanges throughout the world. This research is then sold or distributed to BNP Paribas Group's customers around the world. Most research operations are managed through a network of subsidiaries operating under the BNP Paribas Personal Investors business line, which is "dedicated to providing financial advice to a mass-affluent clientele in Europe and several emerging countries. . . ." *Id.*, Ex. G at 2.

In India, BNP Paribas, acting through BNPP Asia, created a Mumbai-based research team, comprised primarily, if not entirely, of former Discovery Research employees, to investigate and analyze the stocks of Indian public companies. Dhillon Decl. ¶22. The India team's research reports are branded and marketed abroad as a product of "a member company of the BNP Paribas Group." *See, e.g., id.*, Ex. G at 27.⁶

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1 2. **BNPP Asia Operates As An Integral Part Of The BNP Paribas Group**
 2 **By Executing Trades On Asian Markets For BNP Paribas Customers**
 3 **Worldwide.**

4 Based in Hong Kong, Defendant BNPP Asia is an integral part of BNP Paribas's
 5 global system of investment services for customers of the BNP Paribas Group, including
 6 investors located in California. BNP Paribas's 2006 annual report describes Defendant
 7 BNPP Asia's "integrated Asian equity brokerage solution":

8 Since its recent integration into Equities and Derivatives, BNP Paribas Securities
 9 Asia has offered its institutional clients a comprehensive range of research,
 10 execution, and distribution services in Asian equity products and their
 11 derivatives. Based in Hong Kong, the BNP Paribas Securities Asia teams are
 12 present on all Asian markets, particularly in China, Japan, India, Korea, Taiwan
 13 and South-East Asia (Singapore, Indonesia, Malaysia and Thailand). In total,
 14 over 250 professionals are active on the secondary markets as well as in
 15 providing a distribution platform for the primary market and equity derivatives.
 16 *BNP Paribas Securities Asia also has sales teams in the United States (New York*
 17 *and San Francisco) and Europe (London, Paris and Milan). (Gallo Decl. Ex. H at*
 18 *29-30 (emphasis added))*⁷

19 The BNP Paribas website describes BNPP Asia as a "pioneer in Asian equities brokerage"
 20 that is tied to BNP Paribas and "part of the Group's Equity Derivatives division." *Id.*, Ex. I.
 21 The website touts BNPP Asia's "comprehensive" range of equities trading solutions for
 22 institutional investors, its equity research capacities in "nine of Asia's most active
 23 economies . . . [including] India," its advanced trading and execution platform and its
 24 "exclusive franchise" with BNP Paribas's Corporate Finance Asia Pacific division. *Id.* The
 25 website refers investors to their BNP Paribas Group sales representatives, or to the BNP
 26 Paribas website, for further information on BNPP Asia's offerings. *Id.* Thus, as the BNP
 27 Paribas Defendants' own materials show, BNPP Asia offers a wide range of services related
 28 to Asian markets to clients of the BNP Paribas Group throughout the world, including
 29 California, where those customers have been serviced by a sales team located in San
 30 Francisco.⁸

31

 32 ⁷BNPP Asia has been "part of the [BNP Paribas] Group's Equity Derivatives division"
 33 since September 2006. *Id.*

34 **REDACTED**

The management structure of BNPP Asia further reveals the depth of its integration into the larger BNP Paribas Group. Pierre Rousseau, one of the principal architects of the raid on Discovery Research, is both the Chief Executive Officer of BNPP Asia *and* the Global Head of Equity Brokerage for BNP Paribas, and reports directly to Yann Gerardin, Global Head of Equities and Derivatives for BNP Paribas. *Id.*, Exs. A, J at 2.

3. BNPP Asia Serves BNP Paribas Clients In California By Executing Trades Worth Well More Than \$100 Million.

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Id. Since providing BNPP Asia's interrogatory responses, the BNP Paribas Defendants have claimed that the information provided in BNPP Asia's responses overstates the commissions received for transactions executed for California investors. Gallo Decl. Ex. O. However, the BNP Paribas Defendants have not provided Plaintiffs with a revised number or any estimate of the amount by which their original number is off. *Id.*

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27 ¹¹NASD rules provide for a maximum commission rate of 5%, absent special
circumstances. Mahon Decl. ¶3. In practice, commissions are rarely if ever that high. *Id.*
28 ¶3-4.

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10 **F. BNPP Asia And Chakravarty's Illegal Raid On Discovery Research
11 Destroyed That Business And Harmed TWP LLC.**

12 In mid-October 2007, Chakravarty, acting without TWP LLC and TWIPL's authority,
13 met in Mumbai with Pierre Rousseau (BNP Paribas' Global Head of Equity Brokerage and a
14 Director and Chief Executive Officer of BNPP Asia) and Jonathan Harris (BNPP Asia's
15 Regional Head of Company Research). Gallo Decl. Ex. J at 2, 3. As Harris's October 15
16 email summary of the meeting attests, Rousseau, Harris and Chakravarty planned to solicit
17 Discovery Research employees to "resign from Thomas Weisel enmass (sic)." Dhillon Decl.
18 Ex. E.

19 In furtherance of their scheme, the BNP Paribas Defendants asked Chakravarty to
20 provide confidential information about the qualifications, expertise and compensation of a
21 targeted group of more than twenty Discovery Research professionals. *See, e.g., id.* (asking
22 Chakravarty to provide "current comp," "job descriptions," "background," and "an
23 indication of what comp levels you would think about for their move to BNP Paribas" for
24 "the core group of your team . . . about 20-25 individuals").

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1 A password-encrypted spreadsheet discovered on Chakravarty's TWP-issued laptop
 2 contains precisely the information Harris requested—Discovery Research employees'
 3 (1) 2007 base and bonus compensation, (2) 2008 expected TWP base compensation,
 4 (3) sector coverage, (4) years of experience, (5) educational background and (6) 2008
 5 "proposed" base and bonus compensation, including a signing bonus. Dhillon Decl. ¶18 &
 6 Ex. F; *see also* Declaration of Laurel Sutcliffe In Support Of Plaintiffs' Consolidated
 7 Opposition To Defendants' Motions To Dismiss The First Amended Complaint Sutcliffe
 8 ("Sutcliffe Decl.") ¶¶7-10 & Exs. A & B (discussing password protection). The spreadsheet
 9 also contains salary and bonus information for Chakravarty and a "purchase price" analysis.
 10 *Id.* Another worksheet in that same encrypted document contains a schedule for interviews
 11 with individual Discovery Research analysts on October 25 and 26, 2007, approximately ten
 12 days after Harris's email and just a few days before the analysts began to give notice. *Id.* A
 13 third worksheet contains a timeline for the defection of Discovery Research analysts. *Id.*

14 These documents show that Chakravarty and the BNP Paribas Defendants used TWP
 15 LLC's confidential information actively to solicit TWIPL employees to quit en masse and
 16 jump ship to BNPP Asia's India business.¹³ And the employees responded. Between
 17 October 31 and November 6, 2007, seventeen Discovery Research employees gave notice—
 18 including ten of Discovery Research's fourteen FINRA-licensed research analysts and seven
 19 research associates. Dhillon Decl. ¶19.¹⁴ Of the four remaining research analysts, three had
 20 only been licensed for a few months. *Id.* Chakravarty would also have resigned if he had
 21 not first been terminated for cause on November 7, 2008, after TWP LLC discovered his
 22

23 ¹³Plaintiffs are informed and believe that Chakravarty provided, or instructed others to
 24 provide, other confidential information to the BNP Paribas Defendants—including business
 25 plans and lists of customer contacts. Because merits discovery has not yet commenced,
 26 Plaintiffs have not yet been able to confirm this. Plaintiffs also know Chakravarty traveled
 27 to Hong Kong during the time the analysts were resigning, and believe he did so specifically
 28 to deliver to the BNP Paribas Defendants confidential information related to Discovery
 Research and to plot and scheme to destroy Discovery Research.

14 ¹⁴In addition to the seventeen research professionals who resigned, TWIPL's human
 resources generalist, who was later discovered to be materially assisting Chakravarty, quit on
 November 7. Dhillon Decl. ¶19.

1 conspiracy with the BNP Paribas Defendants. *Id.*

2 Defendants' orchestration of the mass defection of key employees destroyed the
 3 Discovery Research business. Due to the simultaneous departure of most of its licensed
 4 analysts, Discovery Research could not produce timely research reports on many of the
 5 stocks it covered. *Id.* ¶20. Despite intensive efforts over several weeks to salvage the
 6 damaged business—including exploring efforts to quickly recruit, hire, train and license new
 7 research analysts—TWP LLC management concluded reluctantly that the loss of talent
 8 rendered Discovery Research unable to provide research coverage of a quality and scope that
 9 TWP LLC's subscribers demanded (and had paid for). *Id.* As a result, on December 6,
 10 2007, TWP Group announced that Defendants' actions had forced the shutdown of
 11 Discovery Research. *Id.*; *see also* Gallo Decl. Ex. K. The closure of Discovery Research
 12 deprived TWP LLC of current and future revenue from the sale of subscriptions and from
 13 trading in stocks covered by Discovery Research. Dhillon Decl. ¶20.

14 The BNP Paribas Defendants contemplated, and indeed hoped for, this sequence of
 15 events. Harris's October 15 email to Chakravarty describes BNP Paribas's willingness to
 16 take over TWP LLC's Mumbai office if the mass resignations led to a decision to shut down
 17 operations:

18 Once you have [formal offers for the research team] . . . we'd look to you to
 19 resign from Thomas Weisel enmass. *If their reaction is that they'd move to shut*
down the remainder of the office, we can step in and offer to take over the
remainder as a gesture to save them the office shutdown costs. (*Id.*, Ex. E)

21 Chakravarty's timetable for the team's defection to BNP Paribas includes a date (after the
 22 dates on which team members were expected to resign) for "TWP's decision on real estate"
 23 (*id.*, Ex. F)—an apparent acknowledgement that TWP LLC would have little reason to keep
 24 Discovery Research open once virtually all its qualified analysts were gone.

25 The BNP Paribas Defendants have created their own venture with the research team
 26 poached from Discovery Research. A December 4, 2007 BNP Paribas press release entitled
 27 "BNP Paribas Securities Asia Launches Onshore Research Platform in India" describes the
 28 creation of a 27-person securities research team in India under the leadership of Chakravarty.

1 Gallo Decl. Ex. L. According to the release, the new India research team will “complete
 2 BNP Paribas Securities Asia’s regional research footprint,” and “with the new setup boasting
 3 10 writing analysts and 13 research associates by the end of year, BNP Paribas Securities
 4 Asia will see its India securities capabilities significantly boosted.” This “boost” comes at
 5 Plaintiffs’ expense. Indeed, *all* the people who comprise BNPP Asia’s new India research
 6 venture are former Discovery Research professionals.¹⁵ *Id.*

7 ARGUMENT

8 I. THE COURT HAS JURISDICTION OVER THIS DISPUTE.

9 Defendant BNP Paribas does not contest this Court’s jurisdiction. Defendants BNPP
 10 Asia and Chakravarty oppose jurisdiction primarily on the ground that they have no physical
 11 presences in California. As we show below, these arguments are insufficient. The facts in
 12 this case establish that these defendants are subject to jurisdiction (1) under the “express
 13 aiming theory” and (2) because BNPP Asia provides, on a continuous basis, execution
 14 services to California investors on trades worth hundreds of millions of dollars annually.

15 **A. BNPP Asia Purposefully Availed Itself Of This Court’s Specific Jurisdiction
 16 By Conspiring With Chakravarty To Commit Wrongful Acts Against TWP
 17 LLC, A Known California Resident.**

18 **1. Legal Standard.**

19 A defendant without a physical presence in a state can subject itself to specific
 20 jurisdiction in that state through “express aiming”—the “purposeful direction of a foreign act
 21 having an effect in the forum state.” *CE Distribution, LLC v. New Sensor Corp.*, 380 F.3d
 22 1107, 1111 (9th Cir. 2004) (quoting citation omitted). The “express aiming” requirement is
 23 met “when the defendant is alleged to have engaged in wrongful conduct targeted at a

24 ¹⁵ Plaintiffs have obtained a March 13, 2008 research report authored by one of the
 25 former Discovery Research analysts, Vijay Sarathi. Dhillon Decl. ¶22 & Ex. G. The report
 26 lists Sarathi’s employer as “BNP Paribas India Solutions Pvt Ltd” (“BNPP India”), which is
 27 described as a “member company of the BNP Paribas Group.” *Id.* at 1, 27. The report lists
 28 twenty-one members of BNPP India’s “India Research Team”—*every single one of whom is a former Discovery Research employee.* *Id.* ¶22. BNPP India’s research team is headed by Chakravarty, and comprised of the seventeen research analysts and associates who left Discovery Research en masse between October 31 and November 6, plus three other Discovery Research research associates who left subsequently. *Id.* ¶22 & Ex. G at 24.

1 plaintiff whom the defendant knows to be a resident of the forum state.” *Bancroft &*
 2 *Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000); *Panavision Int'l,*
 3 *L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998).

4 Under the Ninth Circuit’s express aiming test, a plaintiff need not allege that the harm
 5 was directed at the forum *state* itself. The harm is jurisdictionally sufficient if aimed at a
 6 *resident* of the forum state, even when the actions causing the harm occurred outside the
 7 forum. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122 (9th
 8 Cir. 2003) (personal jurisdiction existed over British company that allegedly interfered with
 9 a California company’s business operations in Europe). The harm need not be felt only in
 10 the forum state. A majority of the harm may be felt elsewhere, so long as the defendant
 11 knows the plaintiff will suffer *some* harm in the forum state. *Yahoo! Inc. v. La Ligue Contre*
 12 *Le Racisme et L’Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006) (en banc) (“[T]he
 13 ‘brunt’ of the harm need not be suffered in the forum state. If a jurisdictionally sufficient
 14 amount of harm is suffered in the forum state, it does not matter that even more harm might
 15 have been suffered in another state.”).

16 **2. BNPP Asia’s Raid On Discovery Research Was Expressly Aimed At**
 17 **TWP LLC.**

18 By wrongfully acquiring confidential information about Discovery Research and its
 19 professionals and using that information to lure away Discovery Research’s trained analysts,
 20 BNPP Asia disrupted the flow of research reports from Mumbai to TWP LLC in
 21 California—ultimately causing the destruction of TWP LLC’s entire Discovery Research
 22 initiative. In so doing, BNPP Asia deliberately harmed a known California resident and
 23 purposefully availed itself of this Court’s jurisdiction.

24 TWIPL and Discovery Research’s close ties to TWP LLC were readily apparent to
 25 BNPP Asia. TWP Group’s *public* filings state that TWIPL was both a subsidiary and
 26 NYSE-approved branch of TWP LLC. *See, e.g.*, Gallo Decl. Ex A. The Discovery
 27 Research analysts, including Chakravarty, were registered as associated persons of TWP
 28 LLC with FINRA and other U.S. regulatory authorities. This information, too, was *publicly*

1 available at the FINRA website. Chakravarty, BNPP Asia's "inside man," was a TWP LLC
 2 employee throughout his tenure at Discovery Research.

3 BNPP Asia officials, including Rousseau and Harris, undoubtedly knew of the
 4 connection between Discovery Research and TWP LLC, as did their co-conspirator
 5 Chakravarty. Their recognition of the connection is on display in Harris's October 15 email
 6 to Chakravarty, which envisions that Discovery Research personnel will "resign from
 7 *Thomas Weisel* enmass." Dhillon Decl. Ex. E (emphasis added). Harris makes no
 8 distinction between the Indian subsidiary and the California-based parent company.

9 That the harm has befallen a California plaintiff is equally clear. As set forth in the
 10 Statement of Facts, Section C, *supra*, Discovery Research's operations were intertwined
 11 inextricably with TWP LLC in San Francisco and were operated for TWP LLC's benefit.
 12 Discovery Research served as an offshore manufacturing facility whose "product"—research
 13 reports on under-covered U.S. companies—was supplied to TWP LLC according to its
 14 specifications so that TWP LLC could package, market and sell it. TWP LLC personnel
 15 based primarily in San Francisco decided which companies to research, supervised the
 16 analysis, and sold and distributed the reports on a subscription basis. Investors' subscription
 17 agreements and payment arrangements were with TWP LLC, not TWIPL; TWP LLC stood
 18 to receive any revenue and profit from the subscription agreements over and above TWIPL's
 19 operating costs plus twelve percent.¹⁶

20 Having targeted a California company, it is legally beside the point that BNPP Asia's
 21 wrongful acts occurred in Asia. *Harris Rutsky*, 328 F.3d at 1131 (personal jurisdiction
 22 upheld based on express aiming into California when defendant targeted resident corporation
 23 with wrongful acts performed in London); *see also, e.g., Integral Development Corp. v.*

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 25 ¹⁶The BNP Paribas Defendants mischaracterize this lawsuit as "essentially an
 26 employment dispute involving Indian employees who are employed in India" (BNP Paribas
 27 and BNP Paribas Securities Mot. to Dismiss First Am. Compl. ("BNPP Mot") at 13)—an
 28 argument that glosses over BNPP Asia's own Hong Kong citizenship and connection to a
 worldwide bank, and ignores altogether the California citizenship of the principal plaintiff,
 TWP LLC.

1 *Weissenbach*, 99 Cal. App. 4th 576, 587 (2002) (misappropriation of trade secrets by
 2 German national managing German subsidiary of California company and use of that
 3 information to injure California company supported exercise of personal jurisdiction under
 4 express aiming theory). A primary justification for the “express aiming” doctrine is to
 5 prevent a state’s residents from having to travel to sue out-of-state wrongdoers who target
 6 those residents from afar. *Calder v. Jones*, 465 U.S. 783, 790 (1984) (“An individual injured
 7 in California need not go to Florida to seek redress from persons who, though remaining in
 8 Florida, knowingly cause the injury in California”). The knowing targeting and the harm are
 9 the keys—and both are present here.

10 **B. General Jurisdiction Exists Over BNPP Asia Which Provides Substantial,
 11 Continuous And Systematic Services To California Investors Through Other
 BNPP Paribas Affiliates That Have Substantial California Contacts.**

12 **1. A Foreign Defendant With Minimal Direct Contact With A Forum
 13 Nonetheless May Be Subject To General Jurisdiction If It Uses A
 General Agent For Business Within That Forum.**

14 A court may exercise general jurisdiction over a non-resident defendant with
 15 substantial, continuous and systematic contacts with the forum. BNPP Asia unquestionably
 16 conducts substantial business that originates in California.

17 **REDACTED**

18 These contacts alone are substantial
 19 enough to warrant general jurisdiction. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d
 20 1163 (general jurisdiction existed over company doing hundreds of millions of dollars of
 21 business in state).

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 27 An out-of-state entity may be subject to general jurisdiction through the conduct of a

28 OPP. TO DEFS.’ MOT. TO DISMISS FIRST AM. COMPL. C-07-6198 MHP

1 “general agent” used to conduct business within the forum. *Harris Rutsky*, 328 F.3d at
 2 1134-35. An in-forum entity serves as a foreign defendant’s “general agent” by performing
 3 services in the forum that it “would have to undertake” itself if the foreign defendant “did
 4 not have a representative to perform them.” *Id.* at 1135 (internal citation omitted). The
 5 general agent’s contacts with the forum are imputed to the foreign defendant, so that
 6 jurisdiction over the agent also creates jurisdiction—either specific or general, depending on
 7 the nature of the contacts—over the foreign defendant. *Id.*¹⁷

8 Affiliates operate as each other’s agents in different states or countries if they depend
 9 on each other’s foreign operations to produce a single integrated product. In such situations,
 10 the out-of-state entity, but for the existence of the in-forum affiliate acting as its general
 11 agent, either would have to forego operating in the forum or create its own contacts with the
 12 forum. In *Palmieri v. Estefan*, 793 F. Supp. 1182 (S.D. N.Y. 1992), for example, the court
 13 held that general jurisdiction existed in New York over a network of thirty-three foreign
 14 subsidiaries of New York-based Sony Music. *Id.* at 1187-94. The subsidiaries used their
 15 New York parent as a conduit for new products (music recordings made in New York) and
 16 as a central clearing house to swap recording rights. *Id.* at 1185-86. The subsidiaries were
 17 subject to jurisdiction based on the New York contacts of Sony Music because “when two
 18 corporations have common ownership and their activities are interrelated as here, they may

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20 ¹⁷Other jurisdictions have also adopted the general agency theory of jurisdiction. See,
 21 e.g., *Dainippon Screen Mfg. Co., Ltd. v. CFMT, Inc.*, 142 F.3d 1266, 1270-71 (Fed. Cir.
 22 1998) (upholding jurisdiction over foreign subsidiary company based on parent’s contacts in
 23 forum); *Mangual v. Gen. Battery Corp.*, 710 F.2d 15, 20-21 (1st Cir. 1983) (upholding
 24 jurisdiction over foreign parent corporation based both on individual agent’s tortious
 25 conduct in forum and fact that parent shared office space with in-forum subsidiary); *Shanks*
 26 v. *Westland Equip. & Parts Co.*, 668 F.2d 1165, 1166-68 (10th Cir. 1982) (upholding
 27 jurisdiction over foreign trailer manufacturer based on in-state affiliate’s frequent use of
 28 foreign manufacturer’s trailers in the state); *Palmieri v. Estefan*, 793 F. Supp. 1182, 1187-94
 (S.D.N.Y. 1992) (upholding general jurisdiction over foreign subsidiary when in-state parent
 acted as agent); *Brunswick Corp. v. Suzuki Motor Co. Ltd.*, 575 F. Supp. 1412, 1421-23
 (E.D. Wis. 1983) (holding that Wisconsin agent’s contacts could subject foreign corporate
 affiliates to general jurisdiction when the foreign affiliates had “systematically injected
 themselves into the Wisconsin market place” through the acts of their Wisconsin agents);
Orefice v. Laurelview Convalescent Ctr., Inc., 66 F.R.D. 136, 139-42 (E.D. Pa. 1975)
 (jurisdiction over foreign subsidiary appropriate when parent acted as in-forum agent, even
 where parent’s forum contacts had nothing to do with subject matter of suit).

1 have an agency relationship for jurisdictional purposes, even if the resident corporation is
2 not controlled by the nonresident entity.” *Id.* at 1194. In *Freeman v. Gordon & Breach, Sci.*
3 *Publishers*, 398 F. Supp. 519, 520-522 (S.D.N.Y. 1975), a New York district court asserted
4 jurisdiction over a foreign company based on the contacts of its New York affiliate. The two
5 commonly owned corporate affiliates, although distinct corporate entities, acted as “one
6 commonly owned enterprise . . . which, in order to function, must rely upon the joint
7 endeavors of each constituent part.” *Id.*

8 As these cases indicate, the agent need not be a subsidiary of the foreign business
9 entity. It can be above the foreign entity on the corporate ladder. Thus, a resident parent can
10 be a foreign subsidiary's local agent even though the subsidiary is often the smaller entity
11 and lacks "control" over the parent's acts. *Dainippon Screen Mfg. Co. v. CFMT, Inc.*, 142
12 F.3d 1266, 1271 (Fed. Cir. 1998) (parent could be in-forum agent of subsidiary); *Shanks*,
13 668 F.2d at 1166-68 (sister company as agent); *Palmieri*, 793 F. Supp. at 1187-94 (parent as
14 agent); *Jayne v. Royal Jordanian Airlines Corp.*, 502 F. Supp. 848, 856-60 (C.D. N.Y. 1980)
15 (same); *Energy Reserves Group, Inc. v. Superior Oil Co.*, 460 F. Supp. 483, 513-15 (C.D.
16 Kan. 1978) (same); *Orefice*, 66 F.R.D. at 141 (same); *Freeman*, 398 F. Supp. at 520-22
17 (S.D. N.Y. 1975) (same).

2. BNP Paribas Affiliate BNPP Securities Corp. Serves As BNPP Asia's California Agent Because It Performs Functions In California That BNPP Asia Otherwise Would Have To Perform For Itself.

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HOWARD
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& RABIN

Professional Corporation

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3 3. General Jurisdiction Exists Because The California Contacts That Can
4 Be Imputed To BNPP Asia Are Substantial, Continuous, And
5 Systematic.

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Such substantial contact with California is more than enough to invest this court with general jurisdiction over BNPP Asia.

C. This Court Has Specific Jurisdiction Over Chakravarty Because He Was A TWP LLC Employee At The Time Of The Conspiracy And Knew That Raiding Discovery Research Would Injure TWP LLC In California.

Chakravarty is subject to this Court's specific jurisdiction for the same reasons described above. As a Director of Discovery Research with intimate understanding of its business model, Chakravarty facilitated the BNP Paribas Defendants' raid on Discovery Research and understood that gutting Discovery Research would injure TWP LLC in San

1 Francisco. When he conspired with the BNP Paribas Defendants, Chakravarty remained an
 2 employee of TWP LLC and knew his own departure would harm TWP LLC. He, like his
 3 co-conspirators, “expressly aimed” his wrongful conduct at his California-based employer.

4 By virtue of his employment agreements with TWP LLC—including his agreements
 5 not to disclose confidential information and not to use company resources to his own
 6 advantage—Chakravarty also remained in contractual privity with TWP LLC, a California
 7 company, until he was terminated for his part in the raid. *Burger King Corp. v. Rudzewicz*,
 8 471 U.S. 462, 479-80 (1985) (minimum contacts existed over party that entered into contract
 9 with substantial connections with forum state). *See also, e.g., Integral Development Corp.*,
 10 99 Cal. App. 4th at 589-90 (2002) (minimum contacts existed over a German national who
 11 entered into an employment agreement with a California company to manage its German
 12 subsidiary).

13 **D. Jurisdiction Over BNPP Asia And Chakravarty Is Reasonable And
 14 Necessary For The Furtherance Of Justice.**

15 Reasonableness and justice require that this Court exercise jurisdiction over BNPP
 16 Asia and Chakravarty for two independent reasons: (1) BNPP Asia and Chakravarty
 17 knowingly caused the destruction of San Francisco-based TWP LLC’s Discovery Research
 18 initiative; and (2) BNPP Asia maintained substantial contacts with California through its
 19 general agent.

20 The Ninth Circuit balances seven factors to decide whether jurisdiction is reasonable:

21 (1) the extent of the defendants’ purposeful injection into the forum state’s
 22 affairs; (2) the burden on the defendant of defending in the forum; (3) the extent
 23 of conflict with the sovereignty of the defendant’s state; (4) the forum state’s
 24 interest in adjudicating the dispute; (5) the most efficient judicial resolution of the
 25 controversy; (6) the importance of the forum to the plaintiff’s interest in
 26 convenient and effective relief; and (7) the existence of an alternative forum.
 27 (*Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1114 (9th Cir. 2002))

28 The burden is on Defendants to demonstrate in “compelling” fashion that the seven factors
 29 weigh heavily against the exercise of jurisdiction here. *Burger King*, 471 U.S. at 477. If the
 30 question is close, a court cannot decline to exercise jurisdiction for lack of reasonableness.

31 *See Roth v. Garcia Marquez*, 942 F.2d 617, 625 (9th Cir. 1991) (exercise of personal

1 jurisdiction was reasonable even though only two of seven reasonableness factors favored
 2 plaintiff while three favored defendants; even though the defendants may have been “able to
 3 show that the exercise of jurisdiction might be unreasonable,” the “closeness of the question
 4 manifests that they cannot do so in a compelling fashion”).

5 The present case is not close; the reasonableness factors weigh heavily in favor of
 6 jurisdiction in California.

7 **1. The Purposeful Injection Factor Weighs Strongly In Favor Of
 8 Jurisdiction Because BNPP Asia And Chakravarty Expressly Aimed
 9 Wrongful Conduct At TWP LLC.**

10 BNPP Asia deliberately injected itself into this forum by establishing substantial
 11 contacts with California through its corporate affiliates. More importantly, both BNPP Asia
 12 and Chakravarty expressly aimed their wrongful conduct into California. The fact that
 13 BNPP Asia and Chakravarty aimed wrongful conduct at TWP LLC “knowing that [this
 14 conduct] would likely injure [TWP LLC] in California” is sufficient to tip the purposeful
 15 injection factor “strongly in plaintiff’s favor.” *Dole*, 303 F.3d at 1115 (internal citation and
 16 quotation marks omitted). *See also, e.g., Integral Development Corp.*, 99 Cal. App. 4th at
 17 588 (German national’s alleged misappropriation of trade secrets from California company
 18 and alleged use of that information to injure California company constituted tortious conduct
 19 aimed at a California plaintiff and provided a reasonable basis for the assertion of
 jurisdiction).

20 **2. Defendants Have Not Shown That Defending This Lawsuit In
 21 California Would Be Unduly Burdensome.**

22 The burden on Defendants is not a significant factor. Unless inconvenience to the
 23 defendant “is so great as to constitute a deprivation of due process, it will not overcome clear
 24 justifications for the exercise of jurisdiction.” *Roth*, 942 F.2d at 623 (internal quotation
 25 marks omitted). While litigating in California will be somewhat inconvenient for
 26 Defendants, “the advent of ‘modern transportation’ certainly has made the burden of
 27 defending in a foreign forum more palatable.” *Ballard v. Savage*, 65 F.3d 1495, 1501 (9th
 28 Cir. 1995) (internal quotation marks omitted). Defendants have not presented any concrete

1 evidence of hardship or pointed to any special burden that litigating in California would
 2 impose on them, especially relative to the burden Plaintiffs would experience if they were
 3 forced to litigate in India.¹⁸

4 **3. There Is No Evidence That Hearing This Dispute In California Will
 5 Conflict With Indian Sovereignty.**

6 Defendants argue that India's sovereignty interest is implicated (BNPP Mot. at 11; Def.
 7 Praveen Chakravarty's Mot. to Dismiss First Am. Compl. ("Chakravarty Mot.") at 11) but
 8 nowhere explain how TWP LLC's petition for redress *conflicts with* India's sovereignty
 9 interest. Moreover, every lawsuit in a U.S. court against a foreign defendant tangentially
 10 implicates a foreign nation's sovereignty interest. But, that sovereignty interest "is by no
 11 means controlling." *Ballard*, 65 F.3d at 1501; *see also id.* (if a foreign nation's sovereignty
 12 interest were "given controlling weight, it would always prevent suit against a foreign
 13 national in a United States court") (internal quotation marks omitted). In fact, since a Hong
 14 Kong corporate defendant conspired here with an Indian individual to harm a corporation
 15 headquartered in California, India's sovereignty interest is arguably third in line behind
 16 California and Hong Kong.

17 **4. California Has A Strong Interest In Hearing This Dispute.**

18 California "has a strong interest in providing a forum for its residents and citizens who
 19 are tortiously injured." *Dole*, 303 F.3d at 1115-16. TWP LLC's California citizenship alone
 20 tilts this factor in favor of jurisdiction. *See id.; see also Ballard*, 65 F.3d at 1501.¹⁹

21 ¹⁸This point is discussed further in our response to Defendants' *forum non conveniens*
 22 argument. *See Section II, infra.*

23 ¹⁹The BNP Paribas Defendants cite the admiralty case *Pacific Atlantic Trading Co., Inc. v. M/V Main Exp.*, 758 F.2d 1325, 1330 (9th Cir. 1985) for the proposition that
 24 California's interest in protecting its residents does not extend "to conduct that occurred
 25 outside California." BNPP Mot. at 11. *Pacific Atlantic* asserts no such broad proposition,
 26 which would eviscerate the express aiming doctrine (a standard built, after all, on the
 27 principle that foreign defendants *should* be subject to jurisdiction for wrongful conduct that
 28 occurs outside the state but is aimed into it). Instead, *Pacific Atlantic* merely expresses
 concern about harm to commerce "when the forum activities of the nonresident are not
 substantial." *Pac. Atl.*, 758 F.2d at 1330. In that case, the nonresident's forum activities
 were *de minimis*, and the subject of litigation was an indemnification contract "executed
 abroad between Malaysian and West German citizens." *Id.* Even though the plaintiff was a
 (continued . . .)

1 **5. A California Forum Will Allow Efficient Resolution Of This Lawsuit**
 2 **And Is Critical To Plaintiffs' Ability To Obtain Convenient And**
 3 **Effective Relief.**

4 A California forum is critical to TWP LLC and TWIPL's ability to obtain "convenient
 5 and effective relief." Defendants' preferred forum, India, is a country notorious for its
 6 understaffed judiciary and decades-long docket backlogs.²⁰ As discussed at greater length in
 7 our response to Defendants' forum non conveniens argument (*see* Section II(C), *infra*), the
 8 balance of private and public convenience factors that courts consider is compellingly in
 9 favor of Plaintiffs.²¹

10 Since several factors heavily favor jurisdiction, and no important factors tilt the other
 11 way, this court can reasonably exercise jurisdiction. Indeed, declining jurisdiction would be
 12 unreasonable as it would permit Defendants to sling arrows at a California resident without
 13 having to answer for their deeds in a California court.

14 **E. TWP LLC Has Standing Because It Suffered Direct Injuries From**
 15 **Defendants' Wrongful Conduct.**

16 Defendant Chakravarty's shareholder standing argument (Chakravarty Mot. at 6-7) is
 17 misplaced because TWP LLC has alleged direct injuries in connection with each of its
 18 claims. A shareholder "with a direct, personal interest in a cause of action [may] bring suit
 19 even if the corporation's rights are also implicated." *Franchise Tax Bd. of Cal. v. Alcan*
 20 *Aluminum Ltd.*, 493 U.S. 331, 336 (1990). A shareholder has standing if the defendant

21 (. . . continued)

22 California citizen, the court found California's interest in that particular controversy was
 23 "weak." *Id.* *Pacific Atlantic* is distinguishable from the present case, in which the
 24 defendants expressly aimed their tortious conduct into California.

25 ²⁰ *See* Section II(B), *infra*, for further discussion of India's inadequacy as a forum for
 26 this lawsuit.

27 ²¹The seventh and final Ninth Circuit reasonableness factor—the existence of an
 28 alternative forum—is irrelevant. "[W]hether another reasonable forum exists becomes an
 29 issue only when the forum state is shown to be unreasonable." *Sinatra v. Nat'l Enquirer,*
 30 *Inc.*, 854 F.2d 1191, 1201 (9th Cir. 1988) (quoting citation omitted) (finding that the
 31 exercise of jurisdiction was reasonable even though plaintiff had "not met his burden to
 32 show that another forum is unavailable"). Since Defendants have failed to make a
 33 compelling case that jurisdiction is unreasonable, the Court need not consider whether an
 34 alternative forum exists.

1 breaches either a contract made directly with the shareholder, or a fiduciary duty owed
 2 independently to the shareholder. *See, e.g., Strougo v. Bassini*, 282 F.3d 162, 172-76 (2d
 3 Cir. 2002) (class of mutual fund investors had standing to sue directors, officers, and
 4 investment advisor of fund because plaintiffs suffered direct injuries when defendants, in
 5 breach of fiduciary duty, pressured plaintiffs to buy more shares).

6 TWP LLC has standing to assert all its claims because it has suffered the following
 7 direct injuries:

8 • **Theft of trade secrets.** Under the Intercompany Services Agreement between TWP
 9 LLC and TWIPL,

10
 11 **REDACTED**
 12

13
 14
 15 • **Unauthorized access to computers in violation of the Computer Fraud and Abuse
 16 Act.**

17
 18 **REDACTED**
 19

20
 21 These direct injuries give TWP LLC standing to pursue its claim under the Computer
 22 Fraud and Abuse Act, 18 U.S.C. §1030.

23 • **Injuries resulting from Chakravarty's breaches of contract and the implied
 24 covenant of good faith and fair dealing.** Chakravarty directly injured TWP LLC
 25 when he breached agreements between TWP LLC and himself.

26 • **Injuries resulting from Defendants' intentional interference with employment
 27 relationships, with contracts, and with prospective economic advantage.** By
 28 interfering with the employment relationships between Discovery Research employees

1 and TWIPL, Chakravarty and BNPP Asia directly injured TWP LLC because the
 2 resulting destruction of Discovery Research eliminated TWP LLC's ability to sell
 3 Discovery Research reports. This interfered with TWP LLC's existing subscription
 4 agreements with its customers as well as its ability to sell future subscriptions.

5 • **Injuries resulting from Chakravarty's breach of fiduciary duty and BNPP Asia's
 6 aiding and abetting that breach.**

7 **REDACTED**

8 Chakravarty had a fiduciary duty not to disclose TWP LLC's confidential information
 9 or to use his position to seek advantage for himself to TWP LLC's detriment.
 10 Chakravarty's participation in the raid on Discovery Research breached these duties
 11 and directly harmed TWP LLC. Likewise, BNPP Asia directly injured TWP LLC by
 12 aiding and abetting Chakravarty in the theft of these trade secrets.

13 • **Injuries resulting from Defendants' civil conspiracy to commit these tortious acts.**
 14 Defendants' conspiracy directly injured TWP because it resulted in all the wrongful
 15 conduct described above that harmed TWP LLC.

16 In short, since each of its claims arises from a direct injury, TWP LLC has standing to
 17 pursue them.

18 **II. PUBLIC AND PRIVATE INTERESTS REQUIRE THIS COURT TO REJECT
 19 DEFENDANTS' FORUM NON CONVENIENS MOTION AND REFUSE TO
 20 RELEGATE THIS CASE TO THE INADEQUATE ALTERNATIVE FORUM
 21 OF MUMBAI, INDIA.**

22 **A. Legal Standard.**

23 Forum non conveniens is an "exceptional tool to be employed sparingly." *Ravelo*
 24 *Monegra v. Rosa*, 211 F.3d 509, 514 (9th Cir. 2000). A defendant moving to dismiss a
 25 complaint based on forum non conveniens must make a threshold showing that an adequate
 26 alternative forum exists for the plaintiff to pursue its remedy. *Bhatnagar v. Surrendra*
 27 *Overseas Ltd.*, 52 F.3d 1220, 1227-79 (3d Cir. 1995) (litigation backlog rendered India an
 28 inadequate forum because of severe delays in disposing of cases); *Ceramic Corp. of Am. v.
 Inka Maritime Co.*, 1 F.3d 947, 949 (9th Cir. 1993) (Japan was an inadequate forum because

1 its courts would not hear plaintiffs' claim). The defendant must also demonstrate that the
 2 balance of private and public interests *strongly* favors dismissal. *Gates Learjet Corp. v.*
 3 *Jensen*, 743 F.2d 1325, 1335 (9th Cir. 1984) (district court abused discretion in dismissing
 4 case on forum non conveniens grounds because “[t]he balance of the public and private
 5 interest factors is not strongly in favor of the defendants”).

6 There must be a “clear showing of facts which establish such oppression and vexation
 7 of a defendant as to be out of proportion” to the convenience of the principal plaintiff, TWP
 8 LLC²²—an American citizen entitled to a strong presumption that its “home forum,” San
 9 Francisco, is reasonable and convenient. *Ravelo Monegra*, 211 F.3d at 514 (overturning
 10 forum non conveniens dismissal due to lack of proper showing); *Gates Learjet*, 743 F.3d at
 11 1335 (plaintiff’s choice of home forum entitled to deference).

12 **B. Extraordinary Court Congestion And Delays Make The Mumbai, India**
 13 **Court System An Inadequate Forum For This Lawsuit.**

14 Were this case sent to India, TWP LLC would be forced to seek relief in a legal system
 15 infamous for delays so egregious that knowledgeable lawyers sometimes warn plaintiffs not
 16 to expect a remedy in their lifetimes. Declaration of Justice (Ret.) S. K. Desai In Support Of
 17 Plaintiffs’ Opposition To Motion To Dismiss (“Desai Decl.”) ¶7. Such extreme delay
 18 renders the Mumbai Bench of the Bombay High Court, where this case would be litigated,
 19 an inadequate forum for this lawsuit. *Id.* ¶6; *see also Bhatnagar*, 52 F.3d at 1227-29
 20 (Calcutta High Court was an inadequate forum when cases routinely took 15 to 20 years to
 21 resolve).

22 Civil cases in the Bombay High Court often take *twenty to twenty-five years* to bring to
 23 resolution. According to Justice S. K. Desai, a distinguished Mumbai jurist and former High
 24 Court acting chief justice with more than 50 years of litigation experience in Mumbai, the
 25 present case would likely take 15 to 20 years, *not* including appeals, to reach final resolution.

26
 27 ²² TWIPL is a secondary plaintiff in this case because, as explained *supra*, the majority
 28 of damage was to TWP LLC, the owner of the trade secrets and most of the contractual
 rights and economic advantages that Defendants either interfered with or stole.

1 *Id.* ¶¶7, 8, 32. This grim prognosis is not surprising, given that:

- 2 • There is only one High Court judge for every 1.8 million people in the Bombay High
3 Court's area of jurisdiction, and the average caseload per judge exceeds 6,200. *Id.*
4 ¶¶12, 18. This is almost *ten times* the average caseload per judge of the Northern
5 District of California, itself a busy court with more than 640 cases per judge. Gallo
6 Decl. Ex. M. Only 59 judges are assigned to the Bombay High Court, which has
7 jurisdiction over civil, criminal, and appellate cases worth more than 50,000 rupees
8 (about \$1,200) in the states of Maharashtra and Goa, and the territories of Dadra &
9 Nagar Haveli and Daman & Diu—an area with 110 million people. Desai Decl. ¶¶5,
10 9, 18 & Ex. A. And only *six or seven* judges are assigned on any given day to hear *all*
11 civil litigation before the largest division of the Bombay High Court: the Mumbai
12 Bench, which covers not only the massive city of Mumbai (population 16.4 million)
13 but also surrounding communities with millions more people. *Id.* ¶¶11, 13.
- 14 • Nearly 368,000 cases of all sorts were pending before the Bombay High Court as of
15 September 30, 2007. *Id.* ¶17 & Exs. G, H. The backlog of pending civil cases
16 increased by 400 over the year ending September 30, 2007, and the backlog of pending
17 appeals rose by 3,000 over the same time. *Id.* ¶19 & Exs. G, I, J, K.
- 18 • As a result of this congestion, more than 41 percent of the civil cases pending in the
19 Bombay High Court are more than 10 years old. *Id.* ¶23 & Ex. L. More than half the
20 civil cases are more than eight years old and two-thirds are more than six years old.
21 *Id.* Among these thousands of cases are many that have been pending before the High
22 Court since the 1960s and before, including some from the late 1940s, when the British
23 still ruled India and Harry Truman was President. *Id.* ¶25. In addition, 14 percent of
24 all *appeals* before the High Court—which has jurisdiction over civil, criminal and
25 appellate matters of all sorts—are themselves more than 10 years old, and more than
26 one-third of all appeals have been pending for more than five years. *Id.* ¶24.

27 The Bombay High Court is afflicted with congestion and delays so “extreme” that “the
28 prospect of judicial remedy becomes so temporally remote that it is no remedy at all.”

1 *Bhatnagar*, 52 F.3d at 1227-28. Confronted in *Bhatnagar* with a similarly compelling
 2 statistical record of delay, the Third Circuit affirmed the trial court's holding that the
 3 Calcutta High Court (where the average case took between 15 and 20 years) was an
 4 inadequate alternative forum. This level of delay, the Third Circuit found, was "much more
 5 than the mere minor delay of the sort long tolerated, albeit ruefully, in courts of justice. . . .
 6 Wherever the line might be drawn separating tolerable delay from intolerable—that is, delay
 7 that does not vitiate a remedy from that which does—delays of up to a quarter of a century
 8 fall on the intolerable side of that line." *Id.* at 1228. Delays of such "egregious
 9 magnitude . . . render a remedy clearly inadequate." *Id.* (internal quotation marks omitted).

10 Defendants have cited cases where other courts have declared India an adequate forum
 11 for particular litigation. But, each of those cases involved either special circumstances or
 12 decidedly weaker evidence of delay than that presented either here or in *Bhatnagar*. In
 13 *Chhawchharia v. Boeing Co.*, 657 F. Supp. 1157, 1160 (S.D. N.Y. 1987), plaintiff submitted
 14 only "one newspaper article, which includes anecdotal references to congestion in Indian
 15 courts" as evidence of delay. In *Neo Sack, Ltd. v. Vinmar Impex, Inc.*, 810 F. Supp. 829, 834
 16 (S.D. Tex. 1993), plaintiffs' only evidence of delay in Bombay courts was an affidavit
 17 asserting delays in the court system of Indore, not Bombay. *PLM Int'l, Inc. v. Nath*, 1998
 18 WL 514045 (N.D. Cal. 1998), held that a plaintiff that had previously filed lawsuits in India
 19 could not now argue India was an inadequate forum.

20 *In re Union Carbide Corp. Gas Plant Disaster*, 809 F.2d 195 (2d. Cir. 1987), was a
 21 unique case: through special legislation, the Indian legislature explicitly fast-tracked tort
 22 claims arising from the Bhopal gas leak in order to free them from the usual procedural
 23 constraints of the court system, which even in the mid-1980s was already notoriously
 24 congested. *Id.* at 199 (noting that the "Bhopal Act" provided that the Bhopal cases be
 25 treated "speedily, effectively and to the best advantage of the claimants"). The Second
 26 Circuit upheld the lower court's finding that India was an adequate forum for *those*
 27 *particular lawsuits* in large part because India had created this procedural shortcut for those
 28 "extraordinary cases." *Id.*

1 Plaintiffs here would receive no such special treatment in Mumbai. As Justice Desai
 2 says, they would be “last in a line 368,000 cases long.” Desai Decl. ¶32. Given the
 3 complexities of the case and the BNP Paribas Defendants’ considerable financial resources,
 4 it would likely take decades to reach the front of that line. *Id.* For this reason, the Bombay
 5 High Court is an inadequate forum for this lawsuit.

6 **C. The Balance Of Both Private And Public Factors Dictates That This Court
 7 Retain Jurisdiction.**

8 The court is well aware of the private and public factors it must balance.²³ What must
 9 be emphasized is that a heavy weight is already on the scale: San Francisco is TWP LLC’s
 10 home forum and it is Defendants’ burden to show that other private and public factors
 11 strongly tilt in their direction. *See, e.g., Gates Learjet, 743 F.2d at 1335* (noting that a “real
 12 showing of convenience by a plaintiff who has sued in [its] home forum will normally
 13 outweigh” any inconvenience to the defendant and holding that district court abused
 14 discretion in dismissing case on forum non conveniens grounds because “[t]he balance of the
 15 public and private interest factors is not strongly in favor of the defendants”).

16 **1. The Balance Of Private Factors Does Not Favor Dismissal.**

17 Defendants argue that private factors weigh heavily in favor of dismissal because the
 18 conduct at issue occurred mostly in India, only one of the parties in the case is a California
 19 citizen, and many of the witnesses and documents in the case are located in India or Hong
 20 Kong. BNPP Mot. at 15-16. These factors do not outweigh Plaintiffs’ choice of forum, or
 21 show that India is a markedly more efficient forum than this Court.

22

23 ²³ “The private interest factors include the relative ease of access to sources of proof;
 24 availability of compulsory process for attendance of unwilling, and the cost of obtaining
 25 attendance of willing, witnesses; possibility of view of premises, if view would be
 26 appropriate to the action; and all other practical problems that make trial of a case easy,
 27 expeditious and inexpensive. The public interest factors include the administrative
 28 difficulties flowing from court congestion; the local interest in having localized
 controversies resolved at home; the interest in having the trial of a diversity case in a forum
 that is familiar with the law that must govern the action; the avoidance of unnecessary
 problems in conflicts of law, or in application of foreign law; and the unfairness of
 burdening citizens in an unrelated forum with jury duty.” *Gates Learjet Corp.*, 743 F.2d at
 1334 (quoting citation and internal quotations omitted).

1 *First*, while the tortious conduct at issue may have occurred in India, it was directed at
 2 a research operation that was controlled by, and operated for the benefit of, TWP LLC, a
 3 California citizen. TWP LLC's operation of, and expectations for, Discovery Research play
 4 an important role in this case, as evidenced by the fact that Defendant Chakravarty was at all
 5 times a TWP LLC employee.

6 *Second*, TWP LLC is a California citizen and the principal plaintiff damaged by
 7 Defendants' conduct. India is not a clear "center of gravity" for the parties—Chakravarty
 8 and TWIPL are Indian citizens, but BNPP Asia is a Hong Kong citizen and BNP Paribas is a
 9 French citizen with substantial operations in California and elsewhere in the United States.

10 *Third*, while a number of likely witnesses in this case are located in India, those
 11 witnesses are all (or almost all) employees of either BNP Paribas Group companies or
 12 TWIPL. For example, the majority of the witnesses named in Chakravarty's responses to
 13 jurisdictional discovery as having "direct knowledge of ... facts relevant to this case," (Gallo
 14 Decl. Ex. N at 3-4 (Chakravarty's Response to Interrogatory 2)), are former Discovery
 15 Research research analysts and associates who now work for BNP Paribas Group's new
 16 Indian venture (headed by Chakravarty).²⁴ The BNP Paribas Defendants can see that these
 17 employees—including Chakravarty—appear, and will not be any more inconvenienced by
 18 the cost of bringing them to California than Plaintiffs would be inconvenienced by bringing
 19 their U.S.-based witnesses, described below, to India.²⁵ Furthermore, there will be no need

20

 21 ²⁴See, e.g., Dhillon Decl. ¶22 & Ex. G (March 13, 2008 research report authored by
 22 Vijay Sarathi listing members of BNPP India's "India Research Team"—Shashank
 23 Abhishek, Abhishek Bhattacharya, Alok Deshpande, Karan Gupta, Manish Gupta, Avinash
 24 Singh, Joseph George, Preeti Dubey, Abhiram Eleswarapu, Lakshminarayana Ganti, Sandeep
 25 Thomas Matthew, Girish Nair, Sameer Naringrekar, N. Vijay Sarathi, Amit Shah, Vishal
 26 Sharma, Sriram Somayajula, Kunal Vora, and Charanjit Singh—all of whom are former
 Discovery Research research analysts or associates). Plaintiffs are informed and believe that
 three former Discovery Research administrative employees also named by Chakravarty as
 potential witnesses—Bijal Thakkar, Neelima Mane and Roshan Shetty—have also moved to
 BNPP Asia's new venture. *Id.* ¶23. A final witness named by Chakravarty, Angelo Pinto, is
 a BNPP Asia employee in India. Gallo Decl. Ex. N at 3-4 (Chakravarty's Response to
 Interrogatory 2).

27 ²⁵Plaintiffs expect that a few remaining TWIPL employees based in India might serve
 28 as witnesses in the case. Plaintiffs will make these witnesses available in the United States
 as necessary.

1 for all, or even most, of these witnesses to provide testimony. The analysts and research
 2 associates, for example, would provide largely identical testimony about being recruited and
 3 interviewed by BNPP Asia and resigning from Discovery Research. This cumulative
 4 testimony will be unnecessary.

5 The key witnesses affiliated with BNPP Asia are in Hong Kong. *See* Gallo Decl.
 6 Ex. N at 3-4 (Chakravarty's Response to Interrogatory 2, listing Pierre Rousseau, Jonathan
 7 Harris and Hugo Leung as BNPP Asia employees based in Hong Kong who played a role "in
 8 the recruiting, hiring, decision to hire, interviewing or interrogation [of Chakravarty and the
 9 TWIPL employees who left Discovery Research]).²⁶ Defendants appear to argue that India
 10 is substantially more convenient for these witnesses because Hong Kong and Mumbai are
 11 both in Asia, but this argument is specious—it is a relatively long plane flight from Hong
 12 Kong to either Mumbai or San Francisco, and it will be more or less equally inconvenient
 13 for these witnesses to appear in either forum.

14 Despite Defendants' assertions to the contrary, there are a substantial number of
 15 witnesses whose testimony will be required for this case who are located in the United
 16 States, and in California in particular. These witnesses will testify to, among other things:
 17 Chakravarty's role at, and duties to, TWP LLC and TWIPL; the creation of—and business
 18 model for—Discovery Research, as well as its day-to-day operations; and the harm that
 19 Defendants' actions have caused TWP LLC and TWIPL.²⁷ Additional California witnesses
 20 will likely include forensic experts who will testify to Chakravarty's use of Plaintiffs'
 21 computer system and experts who will testify as to the nature and amount of Plaintiffs'

22
 23 ²⁶Another potential BNPP Asia witness, Theresa Ho, is based in Singapore. *See* Gallo
 Decl. Ex. N at 3.

24 ²⁷Plaintiffs have not yet made their initial disclosures under Federal Rule of Civil
 25 Procedure 26 but would likely call at least the following San Francisco-based witnesses if
 26 this matter went to trial: Mark Fisher (legal), Keith Gay (research), Steve Buell (research),
 27 Austin Hamilton (compliance), Karen Santos (compliance), Daniel Widener (compliance),
 Paul Slivon (institutional sales), Michi Sethavarangura (marketing), Ryan Straub
 (accounting), Dheeraj Soni (IT), and Lisa Sorani (human resources). Plaintiffs would also
 call the following witness located outside California and India: John Columbo (legal—New
 York), and Sian Savage (compliance/editorial—London). KV Dhillon travels frequently
 between Mumbai and San Francisco and would be equally available in either forum.

1 damages. If this action were litigated in India, Plaintiffs would bear the expense and
 2 inconvenience of those witnesses' travel there.

3 *Fourth*, while Defendants make conclusory statements that India provides the most
 4 convenient access to physical evidence and documents in the case, they have not shown this
 5 to be the case. Most of the documents related to the planning and operational details of
 6 Discovery Research are located in San Francisco, not India. The same is true of the
 7 personnel files of Chakravarty and the departed Discovery Research employees. The BNPP
 8 Defendants' claim with regard to relevant documents is not that they are in India, but that
 9 they are in *Asia* (see BNPP Mot. at 16 ("All of the relevant documents related to the hiring
 10 and employment of the former TW India employees are in Asia")). This suggests, consistent
 11 with the email sent by Jonathan Harris, that the efforts to recruit Chakravarty and the others
 12 were run out of Hong Kong and that the documents related to those efforts are located there.
 13 In our electronic age, it is no more difficult to move documents from Hong Kong to San
 14 Francisco than from Hong Kong to Mumbai.

15 *Fifth*, the factor relating to "other practical problems that make trial of a case easy,
 16 expeditious and inexpensive" favors Plaintiffs because, as discussed above, the Mumbai
 17 High Court routinely takes fifteen years or more to decide cases.

18 In short, Defendants have not made, as is their burden, a clear showing of facts
 19 supporting their assertion that private factors weigh heavily in their favor.

20 **2. The Balance Of Public Factors Does Not Favor Dismissal.**

21 Defendants argue that public factors weigh heavily in favor of dismissal because
 22 California has little interest in what Defendants characterize as "an employment dispute
 23 involving two Indian research operations and Indian employees," because California has
 24 little expertise with Indian law, and because a trial in California would impose a burden on
 25 this Court and local juries. None of these arguments holds water.

26 *First*, far from being a local dispute between two Indian companies, the raid on
 27 Discovery Research was conducted by the Hong Kong affiliate of an international banking
 28 conglomerate and was directed at a business that, although partially located in India, was

1 controlled by and operated for the benefit of TWP LLC, a company headquartered in
 2 California. California has a strong interest in preventing its corporate citizens from being
 3 stripped on their assets, even if the immediate conduct that harms the California company
 4 takes place outside the state.

5 *Second*, Plaintiffs have alleged their claims under federal and California law and
 6 Defendants have made no showing, beyond conclusory statements, that Indian law would
 7 apply in this case, or would materially differ from California law. Thus, this Court's
 8 expertise, or lack thereof, in Indian law is irrelevant.

9 *Third*, Defendants incorrectly argue that the burden on this Court and a California jury
 10 of litigating this case in California outweighs California's "comparatively low" interest in
 11 this lawsuit. As described above, California has a strong interest in seeing that the business
 12 operations and revenues of its corporate citizens are not damaged by rogue employees
 13 conspiring with foreign corporations to raid valuable assets. Unlike the *In re Union Carbide*
 14 case cited by Defendants, here the principal entity that has suffered harm is not an Indian
 15 citizen, but rather TWP LLC, a California citizen. Defendants have made no showing that
 16 this case will be particularly burdensome to this Court, and the congestion in this Court,
 17 while significant, pales in comparison to that of the Bombay High Court.

18 In short, a review of the public and private factors shows that they do not weigh
 19 heavily, if at all, in favor of dismissal of this case for *forum non conveniens*.

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CONCLUSION

For the reasons described above, the Court should deny the BNP Paribas Defendants' and Chakravarty's motions to dismiss.

DATED: July 10, 2008.

Respectfully,

GILBERT R. SEROTA
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